

1 distinction between construction and
2 operation, the construction date versus the
3 operation date, this was not a flippant
4 answer. This was not an attempt to be
5 obscure. It was simply a statement of the
6 fact that in this particular service there's
7 no distinction between, it's not like there's
8 a separate time between when you complete
9 construction and when you go into operation.

10 There's no construction permit.
11 There's no operational file and when the
12 stations are constructed, they are
13 operational. Hence that was our statement
14 that the stations were in operation on the
15 date that they were, construction was
16 completed. It's one in the same act. As far
17 as whether stations --

18 JUDGE SIPPEL: Wait a minute. It
19 takes a little bit longer to construct than it
20 does to turn a switch, doesn't it?

21 MR. KELLER: Well, when the
22 station is completed construction, the switch

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1 is turned and I explained this in our answers.

2 JUDGE SIPPEL: She's just asking
3 for two different dates?

4 MR. KELLER: I explained the dates
5 are the same as the date of construction.
6 There's no distinction between the two.

7 JUDGE SIPPEL: Which today you
8 cannot provide or you will not provide?

9 MR. KELLER: Well no, I've
10 provided it where we can. I can't provide the
11 exact date for the older stuff as I've
12 explained. I mean, again, we can only answer
13 what we have. And as I said for the station
14 to be used --

15 JUDGE SIPPEL: Well you're
16 answering the question that way. Are you
17 answering the question in a way --

18 MR. KELLER: Yes.

19 JUDGE SIPPEL: -- that I don't,
20 the information is not available and we try
21 to, you know, all reasonable efforts, we've
22 made reasonable efforts to obtain it. Is that

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1 the answer or is it something else?

2 MR. KELLER: We've explained that,
3 yes.

4 JUDGE SIPPEL: Well you didn't
5 explain it. Hold on just a second.

6 MS. KANE: The only response we've
7 gotten to --

8 JUDGE SIPPEL: -- what's the
9 clarification?

10 MS. KANE: The only response that
11 we've gotten to that answer, to that
12 particular question is similar to this, which
13 we're, you know, these are old stations and we
14 don't know if we have this information.

15 We'll have to look through our
16 documents which we didn't have at the time we
17 prepared the responses. And we intend to
18 supplement this answer. We've received no
19 further supplement to that interrogatory.

20 MR. KELLER: No, we did file a
21 supplement to that interrogatory in which we
22 both, number one and also a Response to the

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1 Motion to Compel explaining what I just now
2 explained. That there is no distinction
3 between construction and operation.

4 MS. KANE: Your Honor, a Response
5 to a Motion to Compel is not under affirmation
6 and oath as would an interrogatory response
7 be. And they've never clarified that they
8 have supplemented and completed their response
9 to number one.

10 We're still waiting for this
11 supplement to a chart that they prepared for
12 the first response that contains information
13 as to one of 66 licenses. That's it. If in
14 fact they can't provide the information for
15 the other 66, then they need to say that. And
16 there needs to be an answer on which the
17 Bureau can rely going forward.

18 But I've yet to hear Mr. Keller
19 answer the question about whether or not its
20 stations are operating. There is nothing in
21 our interrogatory that asks it about AMTS
22 service. We simply ask a very basic question.

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1 Are your stations operating and if
2 not why not? And if they're not operating how
3 long have they been discontinued? We're not
4 asking for a legal determination. This is
5 very basic information.

6 JUDGE SIPPEL: Mr. Keller.

7 MR. KELLER: Your Honor, at this
8 point I'm confused about which interrogatories
9 we're talking about here, which specific
10 questions. As I said, number one --

11 JUDGE SIPPEL: There's two
12 questions. One is the date of construction.
13 The other is the date of operation.

14 MR. KELLER: And also this
15 question about how long they're not operating.
16 We cannot necessarily know that for each
17 station.

18 JUDGE SIPPEL: Well, but you can
19 know which station, you can provide that
20 information and for which you can't.

21 MR. KELLER: Yes, we can.

22 JUDGE SIPPEL: And if you can't

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1 provide the information, you should have a
2 reason why you can't.

3 MR. KELLER: That I can do.

4 JUDGE SIPPEL: I think that would
5 be something to get started doing. But, you
6 know, what kind of a time frame can I give
7 you? It seems to me that the only sensible
8 way this is going to work is for you and Mr.
9 Keller to sit down and figure and just make a
10 list of what it is that he can't give you
11 information for and why.

12 And in any event, I need to act on
13 something that has some grit to it and right
14 now it seems like it's wishy washy all over
15 the place. It's very difficult to do much
16 with that.

17 MS. KANE: Well, Your Honor, part
18 of the reason it's wishy washy is because of
19 the kind of answers that we've been getting.
20 And I think, you know, I don't want to
21 continue to pursue this line when we've got
22 other issues that the other folks in the room

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1 are more concerned with.

2 If we're going to go through the
3 actual chart that we've set out, I think
4 you'll see very clearly what it is that we're
5 missing. And, you know, it's outlined by
6 interrogatory number. So Mr. Keller should
7 have no question about what interrogatory
8 we're asking about.

9 And, you know, we'd like to get
10 some affirmations here on the record as to
11 what it is that Maritime is intending to
12 provide us. We've been waiting now since, you
13 know, February 6th was when you ordered these
14 interrogatories be responded. We're now
15 another month into it.

16 We're all facing a deadline for
17 discovery on this and they've been dragging
18 their feet on the most basic of information.
19 I'm not sure --

20 JUDGE SIPPEL: Well that's your
21 characterization. As I say, it may, there's
22 several ways of looking at this and that's one

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1 way. And it could be that the documents are
2 in such a state of disorder or not organized
3 sufficiently to pull this information
4 together.

5 You know, it could be any number
6 of reasons which, whether they're valid or
7 not, the frustrating part seems to be that
8 nobody knows what's available, what's not
9 available and why. That's, you know, if
10 documents aren't there you can't provide an
11 answer.

12 But if they're there some place,
13 but you don't know where and nobody's looking
14 for them, that's a different kind of a
15 situation. Which is it Mr. Keller, which one
16 is it?

17 MR. KELLER: Well, Your Honor, I
18 think the answer is a little different on
19 different interrogatories. But the bottom
20 line is, to the best that we could we provided
21 the answers that we can provide.

22 Now there may be some, you're

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1 right, some characterizations or
2 interpretations of these questions where
3 perhaps there's a difference of opinion as to
4 what the question means and how it's
5 interpreted. I mean I'm just looking at one
6 example here, it seems like there's always
7 just the worst assumption is made about our
8 motives and that's, I find that unfair.

9 It says we gave a station, an
10 answer that all stations were constructed in
11 accordance with the relevant licenses except
12 for those where minor variations as reported
13 to the Commission. And then there was this
14 question about which stations were constructed
15 with minor variations.

16 Well on the stations that we gave,
17 we provided copies of the construction notices
18 for the east coast stations that were provided
19 by the Commission. And some of those had the
20 minor variations right on them.

21 I mean when the guys signed off on
22 the certification he stated that the station

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1 was constructed, you know, with the
2 authorization and he put in some of them he
3 said except and there might be some minor
4 variation in the height and it's stated right
5 in the document. Now I gave --

6 JUDGE SIPPEL: You didn't break
7 out your answer that way though, I mean you
8 just provide the document? And said you
9 decide which it is that may be a significant -
10 -

11 MR. KELLER: Well no, I mean it's
12 very clear on the face of the document that
13 he's stating that it's minor.

14 JUDGE SIPPEL: Is that clear? It
15 seems to me that we wouldn't be here if it was
16 that clear.

17 MR. KELLER: And again, half of my
18 problem, on 90 percent of this stuff I
19 guarantee you, I disagree with Ms. Kane, I
20 think it could be useful to sit down and have
21 a meeting to go through and get exactly what
22 they want.

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1 Because what happens is, when
2 they're not satisfied with an answer, rather
3 then just picking up the phone and asking can
4 we clarify this, which we would be happy to
5 work with them on, we all of a sudden get
6 either an e-mail or a motion accusing us of
7 all sorts of improper conduct before they've
8 even asked us to clarify our answer.

9 MS. KANE: Your Honor, it's not a
10 matter of clarifying their answer. They in
11 some instances, they simply haven't provided
12 an answer. I mean Mr. Keller is now pointing
13 to documents to respond to an interrogatory
14 that he never pointed to in response to that
15 interrogatory.

16 And frankly, you know, he should
17 be required to identify the specific document.
18 He's now had them all numbered. If there are
19 documents he's relying on for the
20 interrogatory answer, then he's required to
21 identify that by Bates number, not require us
22 to look through 27,000 pages of documents to

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1 find the specific ones he's referring to.

2 They put this answer in an
3 interrogatory. They swore to it by oath. If
4 they're going to rely on it, then they need to
5 provide the evidentiary support for that
6 answer.

7 JUDGE SIPPEL: Well, I mean okay.
8 I'm hearing it several different ways here.

9 MS. KANE: Well I mean, Your Honor
10 --

11 JUDGE SIPPEL: They are
12 responsible for putting, giving a clear answer
13 to an interrogatory. I agree with that
14 premise. And also if the document is vague or
15 indefinite or subject to several
16 interpretations, it's not good enough to just
17 refer to the document without explaining what
18 Maritime, what this means to Maritime.

19 MR. KELLER: Your Honor, I'm a
20 little lost here because I don't have a copy
21 of the interrogatories in front of me, but
22 I've got the quote here from her text of the

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1 interrogatory. It says identify by call sign
2 and location whether the site-based
3 authorizations at issue were properly
4 constructed in accordance with the relevant
5 licenses.

6 The answer that we gave to that
7 was responsive to that request. You know, all
8 the stations were constructed in accordance,
9 except for your minor variations were reported
10 to the Commission. Now again, she's not
11 coming back and saying well which ones. I can
12 happily provide --

13 JUDGE SIPPEL: She shouldn't have
14 to come back and ask which ones. You haven't
15 completely answered that question.

16 MR. KELLER: I believe we have.

17 JUDGE SIPPEL: Well of course you
18 believe you have. But you've got to provide
19 information that is meaningful, not
20 information that's going to lead the Bureau to
21 come back and ask you for more information or
22 more clarification.

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1 It's just a question of taking
2 questions straight up and answering without
3 trying to dance around the edges. Now to me
4 that's pretty plain and obvious. But I can't
5 go through these, sit here and go through each
6 of these interrogatory questions this morning.

7 So I don't, I'm trying, I'm
8 frustrated, how do you plan to figure it out?
9 What's the best thing that could happen on
10 walking out of this court room today?

11 MS. KANE: We think the best
12 thing, Your Honor, as tedious as it might be,
13 is for us to walk through each of these eight,
14 seven interrogatories.

15 JUDGE SIPPEL: Seven, okay.

16 MS. KANE: There's seven
17 interrogatories. One or two of them we've
18 already, to some extent, addressed. But we
19 would like Mr. Keller to acknowledge on the
20 record if they don't have information to
21 those. And those are the construction and
22 placed in operation dates.

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1 And then the other is we've just
2 been getting this kind of circular answer.
3 And Mr. Keller's saying that he doesn't
4 understand our interrogatories or that they're
5 subject to interpretation. It's not subject
6 to interpretation whether a station is
7 operating. It should be pretty basic and
8 understandable to a company like Maritime.

9 JUDGE SIPPEL: Well look --

10 MS. KANE: So we think it would be
11 helpful if we walked through and got on the
12 record what Maritime either, whether they have
13 information, whether they're prepared to
14 provide a supplemental response and if the
15 responses to that is no, then we would seek
16 some sort of adverse inference from Your
17 Honor.

18 JUDGE SIPPEL: Well here's what
19 I'm going to leave. I mean you gave me the
20 seven specifics and I'd say after this
21 "business" section is over and go down and do
22 the gritty work on that.

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1 Anything else, I'll give you to
2 the end of the week to talk about it,
3 approaching any way that you can that's going
4 to be meaningful. And if you can't get the
5 information as you think you're entitled to it
6 by the end of the week, file a Motion to
7 Compel.

8 MS. KANE: Well, Your Honor, right
9 now we've got the seven that, there's only
10 seven interrogatories over which we have some
11 dispute, at least at the moment.

12 JUDGE SIPPEL: You're just, you're
13 in the same boat he is. You're saying just at
14 the moment --

15 MS. KANE: No, I'm saying at the
16 moment --

17 JUDGE SIPPEL: -- and he's saying
18 we're doing the best we can.

19 MS. KANE: No, Your Honor, I'm
20 saying at the moment because we have another
21 outstanding set of interrogatories. And the
22 kind of runaround that we've been getting from

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1 Mr. Keller is, suggests to us that we're not
2 going to get complete answers to those.
3 That's why I say at the moment.

4 JUDGE SIPPEL: Well look, we're
5 not going to speculate on suggestions. He
6 files his answers and then we go from there.
7 He knows what the concerns what you have are.
8 He knows now what the concerns I have in terms
9 of how to approach these answers. You can
10 only say to see what happens on those. What
11 can we get done today? That's what I'm trying
12 to find out.

13 MS. KANE: I think if we could get
14 through our chart today and we could get an
15 acknowledgment from Your Honor to Mr. Keller
16 that he should either provide a supplemental
17 answer to each of these interrogatories or
18 provide a supplemental answer that says he has
19 no information. That would be very helpful to
20 the Bureau.

21 JUDGE SIPPEL: I'm going to leave
22 my instruction as it was. You have until the

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1 end of the week to try and work with counsel.
2 He also suggested a stipulation for some of
3 this. And do you want a stipulation or you
4 think that might be a good idea, you're going
5 to have to propose it to counsel. She can't
6 propose it to you.

7 You've got the information, Mr.
8 Keller. Well how difficult it is to dig out,
9 I have no idea. But it's there, you have it.
10 And again, the idea of just referring to a
11 document and saying well go look for it there,
12 that's not going to work. That's not going to
13 fly.

14 I can do that. I can take adverse
15 inferences. I can bar you from putting in
16 information that's relevant to what you're
17 saying you can't provide information for now.
18 I mean this is going to have, there are some
19 penalties that can be applied. And in any
20 event, you've got a hearing date coming up.
21 This is all Issue 8, right?

22 MS. KANE: Yes, this all Issue 8,

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1 Your Honor.

2 JUDGE SIPPEL: All right. And
3 you've got a hearing date coming up and you
4 also have a second Thursday issue. And you
5 know, you're not, certainly you're not helping
6 me get either one done in a timely fashion if
7 this is the way it's going to proceed.

8 I, you know, I'm not going to say
9 that the fault is yours completely. All I'm
10 going to say is that somehow or another you're
11 not on the, counselor are not on the same
12 wavelength in terms of what to accomplish and
13 how to accomplish it. Recognizing that there
14 are really going to be some situations where
15 you're going to feel strongly that it can't be
16 done.

17 You do not have the information.
18 You've tried to look for it et cetera, et
19 cetera, et cetera. But this wishy washy is
20 just not going to go. So it's going to reach
21 a point where something's going to happen to
22 you.

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1 And I said file next week. I'll
2 give you some specific dates, but file next
3 week if you can't get it worked out.
4 Stipulation, whatever way, you know, the
5 measures, if counsel could figure out a way of
6 proposing this. You don't have to live with
7 exact dates. Can you use on or about dates?

8 MS. KANE: We don't have any
9 dates, Your Honor.

10 JUDGE SIPPEL: Well I know you
11 don't. I'm saying --

12 MS. KANE: And they're not
13 offering on or about dates.

14 JUDGE SIPPEL: I know they're not.
15 I'm saying if they did offer on or about dates
16 could you live with that?

17 MS. KANE: We probably could, Your
18 Honor.

19 JUDGE SIPPEL: With a declaration
20 explaining why that's the best they can do.
21 They don't have the document.

22 MS. KANE: Our greater issue is

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1 not the dates of construction and --

2 JUDGE SIPPEL: Well I thought we
3 started out with that.

4 MS. KANE: It is. It's the first
5 two on the list, but our bigger issue is the
6 fact that they're not providing us information
7 on whether the stations are currently
8 operating.

9 JUDGE SIPPEL: Well now there's a
10 good question. Why wouldn't you know anything
11 about that Mr. Keller? That information
12 should be readily available wouldn't it?

13 MR. KELLER: Actually, Your Honor,
14 it's not and I have to apologize about one
15 thing. I didn't realize this until I looked
16 up, I looked at the Motion to Compel, there's
17 a code that's missing off of the key to the
18 codes in this chart for you, which is
19 currently --

20 JUDGE SIPPEL: Now this chart is
21 your chart?

22 MR. KELLER: Yes, but she quoted

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1 the chart in her motion. She quoted an
2 excerpt from the chart.

3 JUDGE SIPPEL: The chart is your
4 chart?

5 MR. KELLER: Yes. That's right.
6 But I have provided a code that gave the
7 status of each of the stations and one of the
8 codes was U and I see that for some reason the
9 U got left off of the key. And that key was
10 intended to described U as saying currently
11 unknown. And it really is this way, Your
12 Honor.

13 JUDGE SIPPEL: We'll use the DK.

14 MR. KELLER: Pardon me.

15 JUDGE SIPPEL: Use DK for that and
16 then you won't get any confusion with the U's.

17 MR. KELLER: Well, it's either way
18 I didn't --

19 JUDGE SIPPEL: You didn't do it.

20 MR. KELLER: -- I didn't include
21 in that motion --

22 JUDGE SIPPEL: Can you go back and

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1 do it today?

2 MR. KELLER: No, I can go back and
3 it. But, let me explain why it is. Because
4 again I think a lot of this is a different
5 wavelength of misunderstanding in what we're
6 saying here. The Bureau is expecting there to
7 be specific, discreet answers, like a date
8 that operations were terminated, how long they
9 were terminated.

10 It was not even a matter that we
11 can't dig for that information. It's a matter
12 that information just doesn't exist in that
13 form. To give you an example, as of today
14 most of the sites are behind on their rents.
15 I mean since the bankruptcy was filed and even
16 some of them before, but certainly since the
17 bankruptcy was filed there have been no funds.

18 There have been no rents, in some
19 cases the utilities are part of the rent.
20 We've not been able to go out and visit each
21 of these sites. We know that each of the
22 sites were constructed and were operational,

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1 but we don't know any particular site what's
2 happened now since we've been behind on the
3 rents.

4 Whether or not a landlord has
5 disconnected the site or not. So I mean, we
6 just don't know the status of some of these
7 sites. We can only say what we do know and
8 that's the situation.

9 There's also this issue of what it
10 means to be in operation. We've already
11 stated if it's not been stated clearly enough
12 than we'll clarify it, we're not providing
13 service currently to AMTS customers as such.
14 You know, in the way the AMTS service was
15 initially intended. But each of the stations
16 was fully operational, capable of providing
17 that service.

18 JUDGE SIPPEL: You seem to say two
19 inconsistent things.

20 MR. KELLER: No.

21 JUDGE SIPPEL: It would be,
22 service can be offered, but not in the same

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1 way --

2 MR. KELLER: No, no.

3 JUDGE SIPPEL: -- that it's --

4 MR. KELLER: What I'm saying is --

5 JUDGE SIPPEL: -- understood that
6 that service is --

7 MR. KELLER: In some services, in
8 some of the wireless services, Your Honor, in
9 order to be considered constructed, in order
10 to be considered valid you have to not only
11 have constructed the operation, but you have
12 to actually be providing service to some
13 minimum number of units or something like
14 that. In this service, that requirement
15 doesn't exist.

16 So once a station is constructed
17 and operational and capable of providing a
18 service, it's deemed to be completed. And
19 every, what I'm saying is --

20 JUDGE SIPPEL: Plus it would be
21 even easier for you.

22 MR. KELLER: All of the stations

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